

Minutes of the Yadkin County Board of Adjustment

April 13, 2015

Board Members Present:

Richard Foster- Chair
Jeff Smith –Vice chair
Dale Holcomb
Tim Swain
Charles Collins- Alternate

Board Members Absent:

Gray Gentry
Scott Pipes- Alternate

Staff Present:

Mike Poston, Director of Planning and Development
Dawn Vallieres, County Planner

Guests Present:

Frank Emery
Brett Hanna
Anne White
Greg Hill
Donna Shore Terrell
Dalton Mathews
Phil Johnson
Haylie Johnson
Tom Crafton
Richard Foster
Daniel Miller
Jane Craver

John Delafield
Janet Sunderman
Mark Hollar
Chris Hill
Ellen Mathews
Rich Kirkland
Bob Shelton
George Munford
Jay Mackie
Benjamin Chesson
Laura Miller

Call to Order

Chairman Foster called the April 13, 2015 meeting of the Yadkin County Board of Adjustment to order at approximately 6:00 PM. Attendance and quorum were noted. Alternate Charles Collins was made a regular member for this meeting.

Approval of Minutes

Chairman Foster called for a vote to approve the minutes of the March 9, 2015 meeting. Jeff Smith made a motion to approve, Tim Swain seconded. The Board voted to approve the minutes 5-0.

The Board Adjourned the Regular Meeting to hold a Public Hearing. Chairman Richard Foster asked the guests if they had signed in and emphasized that people had to be signed in to speak. Everyone who wished to speak was affirmed or sworn in.

Public Hearing- Hill Brothers, LLC

Conditional Use Permit-Hill Brothers, LLC/ Boonville Solar, LLC -Article 17- Solar Farm

Chairman Richard Foster asked if anyone wished to speak for the proposal. Brett Hanna came forward. He handed out and submitted affidavits; one from their engineer and one from an appraiser with an impact analysis. The application is for a solar farm on property near Boonville along Reece Road. He wanted to address the requirements in the zoning ordinance Article 17: Access issues there are essentially none, there is trip generation data from his engineer; these facilities generate less traffic than one single family house. Of course, there will be a construction phase when they are bringing in the panels. He pointed out the staging area on the site plan. Looking from there to the use and its effect on the surrounding area, as far as any noise, glare, this facility will not produce any of that. People often express an interest about glare. These cells actually absorb the sunlight. The reflective quality of it is about like a pond or field of wheat. As far as noise, the inverters do make a hum but they are inaudible from the property lines. They are on the central part of the property so you won't be able to hear that from the outside. The facility only operates during the day, at night it will only be a quiet non-producing field. As far as smells, they produce none. One of the benefits of this use of property, it will increase the tax value for Yadkin County but it does not tax the County services. There's no water, there's no sewer, there is no impact on traffic. It really is a passive use that is unobjectionable in the local area. The plans that we produced meet all the standards in the zoning. There is screening both a fence and vegetative screening around the facility. Have it blend in and harmonize with the area.

A Board member asked if their corporation would be operating the solar farm? No, Boonville Solar, LLC will construct the facility but there will be an operator who operates the farm.

Will that be another corporation? Yes. (Mr. Delafield answered) Cypress Creek Renewables will be the operator of the facility. They are located in Santa Monica, California. My company is RES Renewable Energy Services. They are our development partner. Each LLC is an individual legal unit.

A Board member asked if liability would be limited to the assets of that corporation? Mr. Delafield answered that he believes so. That entity would be the applicant, Boonville Solar, LLC. The assets on the ground would also be available for liability purposes.

The Board had questions for the engineer.

Frank Emory of Ballantine Associates located in Chapel Hill came forward.

A Board member asked on the information submitted to us, talking about the manner of construction, the posts are hand set? The construction of the actual field would be Cypress Creek because they are the ones who actually build the posts. Our company was based for the general layout and also the erosion control plan.

Will the posts be set in concrete? Mr. Hanna answered. The posts would be pile driven. The only concrete deployed will be the pads for the inverters.

Frank Emory was asked -Are you familiar with the plan to design and do the installation? The temporary laydown area was discussed.

Why are the parcels not connected? Mr. Delafield (involved with the negotiations) There was a development process; they had negotiations with all the property owners in the area. They came to an agreement with the owners of these two parcels. They were unable to come to an agreement with the owner of the parcel in between. It doesn't necessarily decrease the efficiency of this project.

Chairman Richard Foster asked if anyone else wished to speak in favor of this project. Greg and Chris Hill came forward. They are the property owners. They are in favor of this. The two parcels were owned by their father. Their uncle owns the intervening property and he is who they were trying to negotiate with.

Mr. Hanna spoke- If the Board has any questions for our appraiser, he is available to address any questions.

Chairman Richard Foster asked if anyone else wished to speak against this project. Donna Terrell came forward on behalf of Edwin Reece who is the fill in this Oreo cookie. Edwin Reece shared with her that he had attempted to be engaged in these negotiations and was excluded. He has tried to reopen the negotiations and has been told that the project was too far along to talk to him. She does not oppose solar farms but there are several things to consider. This parcel here is a very large installation. She compared it with a 15.5 acre farm in Massachusetts and they were saying it was to be the largest installation in the entire state; and that is smaller than one of these. We need to understand the implications of such a large installation. Of course Mr. Hanna brought up that this isn't like in the Midwest, where they had streamers, remember seeing that on the news where the birds caught on fire and fell down over those photovoltaic cells. I understand that he says these are not mirrors. But she did note that they (Mr. Hanna) said this would have the look of a pond or a field of wheat. It is going to be difficult for Yadkin County people to mistake a solar farm for a field of wheat. We do need to look at the effects on wildlife. That is one of the concerns of our wildlife resources commission, that our birds not think these are ponds. There are other things. One of the things when they were trying to prepare for this hearing was to get an appraiser. And what our appraisers tell us is we don't have comparables because solar is too new. She did notice when she was studying the plan that it was a 6 foot fence, the ordinance calls for 8 foot. She continued to discuss real estate values. To be next door to a solar farm is one thing, but to have a 150 foot property between two solar farms this length is a completely separate matter.

A Board member asked what the footprint was? Engineer Frank Emory answered. The proposed array combined is 16.5 acres.

Donna Terrell continued. Other things for us to consider are the life expectancy of solar panels, anywhere from 15-30 years. Cypress Creeks Renewables is one of the biggest companies for solar farms. What they say on their website is 'Their goal is to have the most farms of anybody anywhere'. You asked the question about the different entities. My business plan would be this; I would have a corporation and a shell corporation and a shell corporation and a shell corporation and I would milk this thing for everything it was worth.

Brett Hanna spoke up. I am going to have to object to that. I let her testify as to appraisals when she is not an appraiser but I can't let her testify as to what we would do as a corporation.

Donna Terrell continued-I was speaking if I was in that position. We don't know who is going to be here in 30 years and there are going to be solar panels out there. We don't have anything in place to remove them.

Chairman Richard Foster asked if anyone else wished to speak against this project. No one came forward. Chairman Richard Foster asked if the applicants would like to make a rebuttal.

Rich Kirkland came forward. He is an NAI appraiser. He is a state certified general appraiser. He had presented a number of matched pairs in his report and he is here to answer any questions about the study. You can see there are subdivisions backed up to solar farms in North Carolina. Matched pairs show there are no impacts on property values. The Board asked questions on the appraisals. Rich Kirkland answered them. You are retained by the LLC? Yes. In the information submitted to us there was a comment that the proposed use would maintain and enhance the value of contiguous property, do you agree with that? Yes, he would agree with that. The split property was discussed.

A Board member asked if he has anything (comps) as far as Yadkin County is concerned? Mr. Kirkland answered that he has looked at solar farms in Yadkin County but has no matched pairs in Yadkin County. He has matched pairs in Roxboro, Orange County and Wayne County.

A Board member asked if any comps had rolling hills or were all the comps in flat ground? Yes, comps were all on flat ground.

Mr. Kirkland mentioned that he has visited over 70 solar farm sites in North Carolina and this is by no means the largest.

Mr. Chris Hill spoke to rebut Donna Terrell. Her uncle being excluded is not accurate. We spoke with him prior to the land being for sale. There was a three way conference call with Mr. Reece of over an hour and a half on multiple occasions. He was not excluded from the negotiations; they could not reach an agreement.

The Board suspended the public hearing on the Hill Brothers, LLC/ Boonville Solar, LLC Solar Farm Conditional Use Permit request.

Regular Board Meeting

Chairman Richard Foster asked the Board if there was any discussion on the request.

The Board discussed property values and the harmony of Yadkin County. Flat ground locations versus rolling hills was discussed and the impact on housing values.

Tim Swain made a motion to approve the Conditional Use Permit request. Charles Collins seconded. Any further discussion? There being a motion on the table...the vote was 2-3 to approve. The Conditional Use Permit for the solar farm on Reece Road was denied.

FOR: Charles Collins, Dale Holcomb

AGAINST: Richard Foster, Jeff Smith, Tim Swain

Director Michael Poston asked for a motion on the Findings of Fact to validate why the Board feels that this project does not meet the standards. The General standards on health and safety were read and addressed.

- A. That the use will not materially endanger the public health or safety if located according to the plan submitted and approved. **The Board agreed that the use would not.**
- B. That the use meets all required conditions and specifications. **The Board agreed.**
- C. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; **The Board of Adjustment disagrees. The Board decided that the use could substantially injure adjacent property values due to aesthetic considerations.**
- D. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Yadkin County Land Use Plan. **The Board of Adjustment disagrees. The building of a solar farm would not be in harmony with the surrounding area.**

Tim Swain made a motion to adopt the Findings of Facts as amended that the Board disagrees with C- that the value of adjoining and abutting properties will be affected and their property values. and D- that the building of a solar panel farm will not be in harmony with the surrounding area. Charles Collins seconded. The Board voted to adopt the findings of fact as amended.

The Board moved to the second item, Phillip Johnson with a change of nonconforming use.

Chairman Richard Foster asked to be recused. Vice chair Jeff Smith asked for a motion to recuse Richard Foster. Tim Swain made a motion to recuse Richard Foster from the Board for this hearing for a conflict of interest. Dale Holcomb seconded. The vote was 4-0 in favor.

Director Michael Poston explained the application. What the Board has before us is an application for a change of a nonconforming use. In 2003, the county adopted zoning. Anything that was in place before then, any businesses or uses that were in place before zoning regulations are nonconforming or often referred to as grandfathered uses. In our ordinance we allow certain things for nonconforming uses. There is an opportunity to expand. There is an opportunity to change the use. There is an opportunity to resume the use if it has been discontinued for a long period of time. Which brings us to this request, which is to take a grandfathered building and change the use to a soap making facility. At this point in time we can suspend the regular meeting and open the public hearing and allow for the applicant to speak on behalf of the application.

Public Hearing- Phil Johnson/ Deborah Mackie

Conditional Use Permit-Phil Johnson/ Deborah Mackie -Article 15- Change of a Nonconforming Use

Vice chair Jeff Smith asked if anyone wished to speak for the proposal. Phil Johnson came forward. He and his daughter want to move into this building as a two person small business. We are not planning on adding anything. If you'll look on the map it is only on approximately one acre. The remaining seven acres of land will be used for residential. Big issue we have come across is vehicle traffic, that's what everybody's worried about. Last year we had about 28- 30 trucks all year long. And that was without consolidated shipping. We have now consolidated our shipping to one day a week. With consolidated shipping we are looking at one truck a week so that number will be substantially reduced. We are a seasonal business. Generally, 95% of our business is done April 1 through October 1 so in the worst parts of the year to upkeep the road is when we will have the least amount of traffic. There have been a couple of questions about waste disposal and discharge. We are not a manufacturing facility we are a mixing facility. Every ingredient that goes into our product is a natural plant extract that is on the FDAs generally regarded as safe category listing. There is no discharge of any kind. They will make a storage area inside. There will be two employees. It is all wholesale through distributors. If the road seems to be an issue, they would be willing to enter into an upkeep agreement on the road.

Disposal was discussed. All the wash-downs and change is captured and sold as seconds when they change from tank to tank.

The road was discussed at length. It is a 25' gravel road. They have not entered into an agreement with anybody yet but Mr. Johnson was willing to sign one to keep the road up to suit everybody. The Board questioned who and what uses were sharing the road. There are two residences and a church before this property and two residences after this building.

Vice chair Jeff Smith asked if anyone else wished to speak for the proposal. Tom Crafton came forward. His company had been renting this building for the last 20 years. Tractor trailers several times a year and a one ton truck with a twenty foot 10, 0000 pound trailer maybe once a month, sometimes more. We have contributed toward maintenance of the road as far as putting gravel down and whatever financial expense there was as far as maintaining the road.

Vice chair Jeff Smith asked if anyone else wished to speak for the proposal. No one came forward.

Vice chair Jeff Smith asked if anyone else wished to speak against the proposal. Donna Terrell came forward. She introduced Mark Hollar, a registered land surveyor who had been involved with drawing the original right of way.

Mark Hollar spoke. There is a 20' existing right of way along here (pointed to aerial). Metal building and residences were pointed out. The DOT does not have a required minimum width right of way. Subdivision regulations were discussed.

Director Michael Poston pointed out that based on our subdivision regulations that easements and existing rights of way can be used for minor subdivisions.

Donna Terrell spoke about the Kelly Estate already being subdivided in 1988. So to cut out this new would be a subdivision of a subdivision.

Donna Terrell talked about historic Courtney-Huntsville. She asked Richard Foster and Mark Hollar to come forward. Others came up also. She displayed photographs and neighbors explained where/ what they were.

Donna Terrell asked showed pictures and asked questions. Richard Foster answered. As you get closer to Farmington Road this is the church property. It is an old church with no parking lot. This is pulling into the driveway. 1888 is when this church was established and they do all kinds of things at this property along with the Easter egg hunt that was going on this day. The road was built in 1974. When the last Kelly died they had about 30 heirs and that was when the right of way was established. Traffic can't meet on this road. If you look at the original plat it describes a gravel drive. Who maintains this? Richard Foster replied that he did and Dalton had since he moved in. During the time the previous tenant was in, they came out every other Friday. It was noted that part of the roadway is on the church property. The easement and who used the road was discussed.

Dalton Mathews came forward. This is not a 25' road. This is a little thing you go down with one vehicle. If you meet someone, somebody's got to give. And there's nowhere to give on part of this road. Somebody's going to have to back up. And a tractor trailer can't be backed up that easily. It would affect him big time. It would prevent him from getting in and out of his property. If you have a tractor trailer blocking the road they couldn't get a fire truck in.

Laura Miller asked if there was any requirement that the road be changed? If they agreed to use the existing road, would we or the church later lose 15 or 20 feet of our property? Road building and expansion was discussed.

Ben Chesson came forward on behalf of the applicants. One, on a permit like this, to oppose this you have to show a substantial adverse impact, that's the standard the Board uses, a substantial adverse impact from what the nonconforming use was. The difference between what Thermcraft used the building for and what the applicants are going to use it for has to be substantial. The second thing, on the right of way is that the majority of the road they are using is on the property still owned by Deborah Mackie and they would gladly give up 20 feet of their portion of property to make that road wider to accommodate any head on traffic that may exist. That's where you would have the interchange.

Bob Shelton came forward. How is the property taxed now? Based on the County's tax records the building is shown as a commercial building. Mr. Crafton how long were you there? And you made product there? Mr. Crafton replied – Over 20 years. They did some assembly and repair and storage. We had trucks in and out based on storage. Mr. Shelton added- And Phil said he got 28 or 29 trucks last year, not one a week.

Daniel Miller came forward. Are we looking at a Conditional Use Permit that would allow certain types of uses or is it changing it to a commercial where if it was sold another business could use it for those purposes? Director Michael Poston answered - The change of uses is

fairly specific. When you ask for a change of a nonconforming use you are changing from one use that is not typically allowed in the zoning ordinance to another use that would not typically be allowed in the zoning ordinance. The Board takes into account the statements that address the general requirements of the access road, off street parking, utilities, landscaping, signs type changes. It also addresses the general standards that were addressed in the last hearing; that the use will not materially endanger the public health or safety; that the use meets all required conditions and specifications; that the use will not injure the value of adjoining property; that the location of the use will be in harmony with the area in which it is to be located and in general conformity with the Yadkin County Land Use Plan.

Basically, it is for a specific use. It can't just arbitrarily change. The decision tonight follows the property. If someone else came in they could not change it to retail store, they couldn't market it for just any purpose. Changes of the intensity of use were discussed.

Donna Terrell noted Ben Chesson's statement that opponents have to prove that the new use should not be approved. She believes it is the opposite, that the Board shall not approve unless the Board finds all seven standards to be met.

Phil Johnson spoke again. They are going to reduce the overall traffic. Specifics were covered again. As far as the right of way, they have no intention of changing that. They just want to move into an existing building.

Ellen Mathews came forward. She talked about the impacts to the community of Huntsville, the history and how many families have been in the area for a very long time. Manufacturing mixing with residential, she thinks that it will impact everything in this area.

Jane Craver came forward. She represents two estates in the area. She has witnessed increased traffic already. She has seen that someone is there about every day. She sees property values being impacted. This right of way that crosses the IH Baity estate, there are 27 heirs. Increasing right of way would be a big job.

A Board member asked for input from any reps from church. Janet Sunderman spoke and said they were concerned that any road widening would take most of the side yard away from the church. They do not have much going on there, just occasionally but they do not want it to impact the children that live there. Anne White from the church spoke about the concerns of the safety of people and children attending church events.

There was a motion made by Charles Collins and seconded by Tim Swain to close the public hearing. The vote was 4-0 to close the public hearing.

The Board suspended the public hearing on the Phil Johnson/Deborah Mackie Change of a Nonconforming Use Conditional Use Permit request.

Regular Board Meeting

A motion to approve was made by Dale Holcomb. Charles Collins seconded.

The Board discussed the application. The 20' right of way but smaller existing drive was discussed. Grandfathered status was discussed. Road standards were discussed at length. The historic nature of the area was discussed.

Standards were discussed:

A. That the use will not materially endanger the public health or safety, if located according to the plan submitted and approved; **Board disagrees. There are safety concerns due to lack of access for emergency vehicles and safety reasons due to church events.**

B. That the use meets all required conditions and specifications;

#1. Access roads or entrance or exit drives with respect to such matters as automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and other emergency. – **Entrance is a private drive not a road. Board does not believe this standard is met.**

#2. Off street parking and loading areas where required and refuse and other service areas with respect to their impact upon the considerations in subsection 1 immediately above and the economic, noise, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood. - **Board agrees existing parking and loading areas are adequate.**

3. Utilities, water, sewerage, schools, fire, and police protection, and other necessary public and private services and facilities with respect to their location, availability and compatibility. – **Board disagrees due to safety considerations.**

#4. Landscaping, screening and fencing with respect to the effectiveness of their type, dimensions and character in minimizing the economic, noise, glare, odor and other impacts on and harmonizing the conditional use with adjoining properties and properties in the general neighborhood.- **Existing nonconforming building does not have any buffering requirements. Board agrees this standard is met.**

#5. Signs, if any, proposed exterior lighting with reference to glare, traffic safety, economic effect, compatibility, and harmony with adjoining properties and properties in the general neighborhood.- **No new signs or exterior lighting proposed. Board agrees this standard is met.**

#6. The type, size and intensity of the proposed conditional use, including such consideration as the size of the site, the location of the use upon it, the hours of operation, and numbers of people who are likely to utilize or be attached to the use, with respect to the impact upon adjoining properties and properties within the general neighborhood, and the purposes of the use district.- **Board agrees this standard is met.**

#7. Changes in surface drainage characteristics with respect to erosion, siltation, pollution, flooding, or other detrimental effects both on the site and other properties. - **Not applicable to this change since it is an existing building. Board agrees.**

- C. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; - **Board agrees.**
- D. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Yadkin County Land Use Plan. – **Board disagrees. This is a historical area with services at the church.**

With a motion to approve on the table, the vote was made 0-4. The application was denied.

Adjournment

With no other business to discuss, a motion to adjourn was made and seconded, the vote passed unanimously 4-0, and the meeting was adjourned at approximately 7:31 p.m.

Respectfully Submitted,
Dawn Vallieres, Secretary to the Board

Approved on _____